

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20054

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Federal Communications Commission
Office of Secretary

In the matter of)
)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)

COMMENTS OF ITCs, INC. IN RESPONSE TO THE COMMISSION'S
REQUEST FOR COMMENT ON THE FEDERAL-STATE JOINT BOARD
RECOMMENDED DECISION ON UNIVERSAL SERVICE

ITCs, Inc., an economic cost consultant to independent telephone companies serving America's rural areas, including Chariton Valley Telephone Company, Columbine Telephone Company, Cunningham Telephone Company, ETEX Telephone Cooperative, Mogan Dial, Inc. - Kansas, Mogan Dial, Inc. - Missouri, South Central Telecommunications of Kiowa, South Central Telephone Association - Kansas, South Central Telephone Association - Oklahoma, Steelville Telephone Exchange, Inc. Tri-County Telephone Association, Inc., TCT West, Inc. And Wiggins Telephone Association, by counsel, respectfully comment on the Recommended Decision of the Federal-State Joint Board on Universal Service to the Commission's Recommendations adopted on November 7, 1996 as follows:

Background

1. The importance of high quality telecommunications services to the economic success (and therefore the well-being of the population) America's rural heartland is second to no other single contributing element. Further the critical importance of support for telecommunication services in the rural Mid-west and Rocky Mountain West is paramount. Simply stated, absent contributions from other and larger scale elements of the telecommunications industry, basic services

would become unaffordable and the quality of service and life in general would deteriorate rapidly; local providers could not remain viable entities.

2. For many small rural Incumbent Local Exchange Carriers the flow of the various contributions is their largest single revenue source. Is it any wonder then, that on hearing of certain provisions of the Recommendation, many companies have suspended further rural development projects. Why, because of the absence of the Recommendation's ability to meet the "specific, predictable and sufficient" provisions of the Telecommunications Act of 1996. Put another way, some of the Recommendations, if adopted by the Commission, herald financial uncertainty and confusion. Thus, it is too risky to invest.

3. It is not the 1996 Act that is the cause of concern. Indeed, the Act appears balanced and protective of the vulnerable local service providers, even as it recognizes the benefits of competition to the consumer. In contrast, the Recommendations cause concern for they do not appear to reflect these same congressionally-defined attributes.

4. Finally, the Commission should take official notice that every single attempt at deregulation in modern history has had an overt, negative impact on the citizens of rural America; trains now bypass nearly every small community, airlines no longer fly regularly to small isolated locations, trucks bring critical material goods only when they have a full load and then often at a premium. With that track record we are now attempting to deregulate the most important service--a lifeline--in rural America. Already, the ominous signs of service deterioration are becoming apparent because of the failure of the Recommendations to adhere to the Act's principles of "specific, predictable and sufficient support mechanisms".

Principles

5. The Public Notice requesting comments on the Recommendations indicates the issue is how should the additional principle of competitive neutrality be defined and applied within the context of universal service. It is here that the rural community of providers are of the opinion that the Joint Board ignored the regulatory principle of equitable and consistent administration of public policy in favor of other interests or persuasions.

The Support Per Loop Freeze

6. Of greatest concern is the freezing of USF support per line on the basis of retroactive conditions. Where in the record is there any analysis of the changes in conditions during the ensuing period and the economic impact this freeze might have on any entity charged with the provision of vital telecommunications service to American citizens? Further, in the Recommendation at 290, it is stated that “Freezing support will encourage rural carriers to operate efficiently because no additional support will be provided for increased costs. This is Alice in Wonderland logic (off with their heads); fact, instead of increased efficiency, the result has been and will be a cessation of construction activity in the majority of small western rural providers.

7. There are Local Exchange Carriers which have incurred costs pursuant at the direction and order of State Regulatory bodies for the purpose of meeting service prescribed standards. With USF rules changed in midstream these companies are forced, simply through prudent management, to either abandoned state sanctioned projects, or lose their financial viability.

8. There are also those entities which have opened previously unserved areas in anticipation of support at least based on present methodology. Now, because of their status at the

end of 1995, they will not be the beneficiary of any immediate support and, given the Recommendations' approach to a transition, they can see no predictable alternative in the future.

9. And there are those entities that, as a result of precedent acquisitions must, by virtue of their conscience or regulatory directive, modernize where service deterioration (often under BOC operations) has reached a level unacceptable in a nation that purports to be the world's economic and technological leader.

10. Cases in point include the Tri-County/TCT West companies of northern Wyoming which began a required program totaling nearly \$13 million in total expenditures most of which are occurring during the year 1996. Included in their program is the extension of new services to previously unserved small remote communities. This service extension was agreed upon given the predictability and sufficiency of the Universal Service Fund program and rules then in affect wherein support would reach approximately \$34.95 per month per line. But under The Joint Board's Recommendations, frozen high cost support will provide only \$10.38 per line per month. The companies will be involved in a concurrent rate case which may result in significant local rate increases; however, given the above, they will not have sufficient revenues to support the telecommunication requirements of the communities they serve. This is plainly wrong.

11. Chariton Valley Telephone initiated a program in 1995 to meet state service standards, prepare for interconnection and to conform with telecommunications public policy principles. This involved plant rearrangements and additions totaling nearly \$8 million with most of the expenditures taking place in 1995 and the remainder in 1996. If implemented, the results of the Recommendation will produce a revenue shortfall of approximately \$25.76 per month per line. This would be plainly wrong.

12. The Steelville Telephone Exchange is similarly situated having to increase investment by nearly 25% in order to meet service requirements. The anticipated monthly shortfall per line will be approximately \$22.25 if the Recommendations are implemented.

13. In all of these cases, additional increases in local rates to the level required, absent the anticipated Universal Service support, will result in significant numbers of customers leaving the network because service became unaffordable. All of these examples are diametrically opposed to the Act's purpose and this Nation's public telecommunications policy.

14. Under no circumstances do these examples reflect an attempt to manipulate or take advantage of a process; but rather, they are based on a process of over 100 years standing to ensure that all Americans are the beneficiaries of a universal service policy.

15. Yet, (1) absent any data in the record supporting a freeze, (2) a change in current procedures requiring use of retro-active conditions and made effective in midstream and, (3) in clear violation of the principles of specificity, predictability and sufficiency, in the name of competitive neutrality, this Recommendation emerges as the choice of the Federal-State Joint Board. These issues certainly beg question of the propriety and legality of imposing a regime that will result in notable harm when, in fact, that is just the opposite of what Congress intended.

Forward Looking Costs

16. A second element in the Recommendations is the use of forward looking costs, which is included despite the appeal of the FCC's Interconnection Order and the interim stay issued by the Eighth Circuit Court of Appeals.

17. Here again, the record does not support the use of a hypothetical approach to the costing of a network that will never exist. Yet, the Joint Board has yielded to concerns such as the

inability to verify embedded costs, the use of obsolete past engineering practices and investment decisions and the absence of incentives to control and reduce expenses (at 211). All of these as well as the other concerns raised by the parties remain as opinions without any recorded basis in fact.

18. The issue of the recovery of embedded costs remains without an answer or even a recommendation. That there is no “...economic reason...” to use embedded costs (at 284), that use of embedded costs “...could jeopardize the provision of universal service.” (At 275), are conclusory statements that beg the question of constitutionally-based cost recovery and raises the specter of a bias against those that have been responsible for the provision of universal service. If the relationship between forward looking costs and embedded costs emerges as the Joint Board obviously expects it will, then the only apparent answer left to Incumbent Local Exchange Carriers is a write-off of assets that may be of significant proportion. If this is what the Joint Board means by the statement “...will prepare these LECs for...the advent of a more competitive marketplace.” (at 290), then such should be stated so that the myth of a concern for the rural consumer (in the face of congressional intent) can be dissipated quickly.

Proxy Models

19. Never in the history of Joint Board proceedings has there been a recommendation such as mandating proxy models that had not been thoroughly explored in terms of the impacts on all of the parties affected as well as the consumer. Far from a complete investigation, the Joint Board states that “We cannot recommend that any of the proxy models submitted in this proceeding thus far....should be used to determine universal service support levels.” (at 268) while also recommending use of “...a proxy model to determine high cost support for all carriers...” (At 283) and concluding that “...a properly designed cost proxy model would allow carriers serving high cost

areas to charge affordable rates” (at 284). This level of inconsistency, confusion and speculation can only result in recommendations, decisions and rules that will not withstand the scrutiny of time, practice and, potentially, the courts.

20. In summary, the additional principle of competitive neutrality has, by virtue of the steps recommended to implement it, creating the opposite affect intended by Congress. The corresponding absence of specific, predictable and sufficient support mechanisms has already produced management decisions that will bring the process of providing universal service to its knees or even to a halt.

Low-Income

21. The Commission’s concerns about the impact of \$5.25 baseline amount are well founded. The lack of affordability can still be present and may even become more so as a result of rate rebalancing and the inauguration a revenue based benchmark. The results of these will be to raise local rates and therefore potentially create a situation where local service remains unaffordable even with the anticipated level of support.

22. A possible answer might be to reverse the approach by determining a level of affordability as opposed to a level of support and providing support for the difference after application of state generated funding.

23. A second approach might be to establish a capped level of local service revenue per line and then providing a fixed level of support.

24. Finally, it might be appropriate to explore a percentage approach wherein this form of support is provided as a percentage of the total, rate for local service.

25. In any approach taken, it appears that a combination from the state, in the form of additional or complementary support, is a very important attribute of a program of this nature. Additionally, the concept of voluntary toll blocking should be of material benefit in increasing the availability of service to those that are in need.

Schools/Libraries

26. The Recommendation goes to great length in determining eligibility for high cost funding through either a continuation of an average cost per loop approach (the present method) or through use of proxy models in the non-rural areas. Inasmuch as these are intended to provide for a determination of high-cost areas for the provision of telecommunications services, they should also be applicable for this purpose.

27. Accordingly, it is recommended that the FCC use the same principle used to designate a high cost area for purposes of high cost fund administration as for the designation of high cost areas for school and library support administration. Nothing in the record indicates significant harm in using the same measurement and the administrative burden is eased.

28. The Recommendation adds a "mid-cost" category; however, this will only serve to complicate the process while providing a constant source of entertainment between Commission staff and each District's congressional delegation; accordingly, it should be eliminated.

Health Care

29. The underlying objective of the health care provisions of the Act are to ensure that the quality of care and services in rural, high cost areas is comparable to that available in urban areas. It is the intent of Congress to ensure that the tremendous advances in modern medicine are available to all Americans regardless of where they live.

30. Given that telecommunications is the key to meeting that intent, it is here and now that this subject is being addressed. While the Joint Board and the Act indicate that the means of achieving this goal is through comparable rates, the real need is the support of modern technology such that the distance between providers is of no consequence in obtaining quality medical care. The quality of transmitted X-ray, Cat Scan and MRI detail must be of diagnostic quality. On-line video transmission of emergency room surgical procedures must be such that professional guidance can be provided from experts in the distant city. The treatment of cardiac incidences must be as rapid and precise as is the norm in urban health care institutions.

31. The current cost of this level of service is high. The technology, in many cases, is new. The discipline and professional relationships are not all in place. Accordingly, what is done here should be looked upon as only a start in this very important area. Above all others, this aspect of Universal Service support should be looked upon as evolving and in need of constant guidance and oversight by representatives of the medical profession, the telecommunications industry and the regulators. A permanent advisory committee should be maintained, goals of cost containment should be established as should evolving health care standards that can be met given the cost, technology and medical discipline equation. As these evolve, so will the underlying objectives of the Act be met.

Administration

32. ITCs shares the concerns of the dissenting voices in the recommendation concerning the propriety of basing support for a federal program on both interstate and intrastate revenues. We also raise the question of what basis might be left for contributions to state universal service programs that either are in place or will emerge from this process.

33. If, however, there is not a coordinated effort, both as it relates to the revenue basis for assessment as well as the specific services to be supported, confusion will reign and the probability of inconsistency and inequity between the various regions of the country will increase. Further, the Commission's concern of manipulation in a competitive marketplace should not be taken lightly. Such is a fact of life in any competitive endeavor.

Other Concerns

34. ITCs respectfully wishes to raise two other concerns related to this process. First, the principle of "Access to Advanced Services" is clearly missing from the definition of core services to be supported; yet, access to these services is critical particularly in rural areas where telecommunications services are the only means available for the acquisition of information. Further, while not part of the definition for high cost support, the principle is applied in defining what is available for schools. The reason for this discrimination is not apparent particularly when the family and economic institutions of society have needs that are similar to those involved in the provision of education.

35. A second area of concern is the failure to include the requirement of equal access to interexchange services. While this has been an integral requirement in the industry, it is suddenly and knowingly omitted (at 58 and 70). Why is this requirement essential enough to be applied to one segment of the industry but is now eliminated in the face of competition? Given this and the item mentioned immediately above, one must wonder if the drive toward competition has caused a tipping of the scales against those who have been and remain the cornerstone of universal service achievements.

36. Finally, ITCs is of the opinion that, with so much of rural telecommunications at stake in this proceeding, the Commission should submit the proposed rules for industry comment prior to their publication with the hope of not prolonging a period of instability and an unpredictable operating environment.

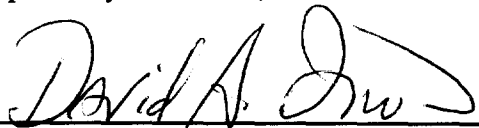
Conclusion

37. ITCs remains most concerned about the steps being taken to implement the added principle of competitive neutrality, the negative affects the Recommendations are already producing and the impacts on the pressure of "specific, predictable and sufficient" support particularly in rural America.

38. ITCs encourages the Commission to recognize and take steps to ensure that the full intent of Congress in providing for the health care needs of rural America are met over the long term.

39. Finally, ITCs is concerned about the equity and consistency with which the principles of universal service and the introduction of competition are being applied and hopes that as telecommunications public policy is being implemented, the intent, as reflected in the Act will be present.

Respectfully submitted,


A handwritten signature in black ink, appearing to read "David A. Irwin", written over a horizontal line.

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December 16, 1996

CERTIFICATE OF SERVICE

I, Tracy L. Trynock, hereby certify that on this 16th day of December, 1996, copies of the foregoing "Comments of ITCs, Inc. In Response to the Commission's Request for Comment on the Federal-State Joint Board Recommended Decision on Universal Service" have been served by first-class United States mail, postage pre-paid, upon the following:

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